IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Second Appeal No. 58 of 2006

Har Singh S/o Sri Ram Chander
R/o Village Chak Jagatpur
Tehsil Jaspur
District Udham Singh Nagar ...Appellant

Vs

1. Uttaranchal State through Collector
   Udhan Singh Nagar
2. Gaon Sabha Angadpur
   Tehsil Jaspur
   District Udham Singh Nagar
   Through its Sabhapati ...Respondents

Sri Jagdish Prasad, learned counsel for the appellant

Hon'ble B.C. Kandpal, J.

This second appeal has been preferred against the judgment and decree dated 10.08.2006 passed by Additional District Judge/F.T.C., Kashipur in Civil Appeal No. 5 of 2005, Hari Singh Vs Uttaranchal State & another whereby learned court below dismissed the appeal.

2- Brief facts of the case are that the plaintiff/appellant – Hari Singh filed a suit for injunction against the defendant/respondent before the Civil Judge (Junior Division), Kashipur, District Udham Singh Nagar, with the allegations that the defendant Hari Singh is in unauthorized possession of 0-020 hectare of Araji Khasra No. 7 and 0-061 hectare land of Araji Khasra No. 8 belong to the Gram Sabha, plaintiff. The plaintiff Gram Sabha filed the suit for eviction and damages @ 140- rupees per day for use of the land.

3. The defendant filed his WS and alleged that the notice issued to him was against the provision of law. He has been in possession of the disputed land for the last 40-42 years. It

was also alleged that he in the village during the years 1992 to 1996 consolidation proceedings were held and the disputed land was kept outside the purview of consolidation and in this way the present suit is against the provisions of Section 49 of and the provisions of U.P. Z.A. and L.R. Act are also not applicable on the disputed land.

4. The learned Civil Judge after hearing the parties and perusing the relevant provisions of law and evidence, directed the defendant under Section 122-B (4-B) of Z.A. and L.R. Act, to institute the suit before the competent court of jurisdiction and declare his possession on the land within a period of three months and in case no suit is instituted and no certificate is file in this regard, he shall be ejected from the land and stopped the proceedings of the case till 30-11-2001.

5. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff/appellant filed an appeal before the Additional District Judge/F.T.C., Kashipur, District Udham Singh Nagar who also dismissed the same vide judgment and decree dated 10.08.2006.

6. Thereafter being aggrieved by the aforesaid judgments and decree passed by the court below, the plaintiff/appellant preferred this second appeal before this Court.

7. Heard Sri Jagdish Prasad, learned counsel for the appellant and perused the record.

8. After having heard learned counsel for the appellant and perusing the judgments and decree passed by the courts below, I do not find any infirmity, incorrectness or impropriety

in the judgments and decree passed by the courts below. In the second appeal, the finding of fact concluded by the courts below, howsoever erroneous may be, cannot be interfered with. I also find that no substantial question of law is involved in this second appeal.

9. Thus, the second appeal lacks merit and is liable to be dismissed.

10. Accordingly, the second appeal is dismissed in–limine.

11. Consequently, the stay application No. 11532 of 2006 is also dismissed.

(B.C. Kandpal, J)

08.09.2006
ASWAL